

Name & Number: Gary Viens # 160446  
Attorney Pro Se  
Utah State Prison  
PO Box 250  
Draper, Utah 84020

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JAN 04 2022  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH  
CENTRAL DIVISION

Gary Clayton Viens, Plaintiff, ) Case No. \_\_\_\_\_  
vs. )  
Dr. Nowicki; P.A. Merrill; ) CIVIL RIGHTS COMPLAINT AND  
P.A. Crockett; Med-Tech Joe; ) DEMAND FOR JURY TRIAL  
P.A. Celinski; Med-Tech Makin; ) Case: 2:22-cv-00008  
JOHN DOES 1-10, ) Assigned To : Nielson,  
employees at Utah State Prison, individually, ) Howard C., Jr  
Defendants. ) Pursuant to 42 U.S.C. §1983 Assign. Date : 1/4/2022  
 ) Description: Viens v.  
 ) Nowicki et al

## A. JURISDICTION

1. Plaintiff Gray Clayton Viens is a citizen of Utah, who presently resides at the Utah State Prison, P.O. Box 250, Draper, Utah 84020.

Dr. Nowicki; P.A. Merrill;  
P.A. Crockett; med.Tech Joe  
2. Defendant p.A. Ceilinski is a citizen of Utah, and is employed as the Doctor, Physicians Assistant, & Med-Tech <sup>one</sup> at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he/she is the Medical Employee at the

Utah State Prison for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

Dr. Nowicki; PA. Crockett Med-Tech Malkin

3. Defendant ~~P.A. Merrill; Med-Tech Joe~~ <sup>P.A. Ceilinski</sup> is a citizen of Utah, and is employed as the Doctor, Physician's Assistant, Med-Tech at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he/she is the Medical Employee for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

4. Other Defendants by name and position, if known: ~~Charge Nurse - 5-8-21,~~  
~~Charge Nurse - 5-12-21, Charge Nurse - (5-6-21) (5-7-21) (5-8-21) (5-10-21)~~  
~~(5-12-21) § (5-22-21) β (7-29-21), (7-30-21), (7-31-21) (8-1-21)~~

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5. Defendant John Does 1-10, whose true names are unknown and when true names are ascertained the pleadings will be amended accordingly, are citizens of Utah, and are employed at the Utah State Prison. At the time the claim(s) alleged in this complaint arose, these defendants were acting under color of state law in that they are employees for the Utah Department of Corrections and are directly responsible for wrongful actions alleged herein.

6. Jurisdiction is invoked pursuant to 28 U.S.C. §1343 (3); and 42 U.S.C. §1983.

## B. NATURE OF CASE

7. Describe the events you believe violated your rights, including the who/what/when/where of your claims.

On 5-3-2021 I Bracy Clayton Viens had a back spasm, my back seized up, my right leg gave out, and I slammed my left torso into the stool in my cell and I immediately felt I had fractured/broke one or more ribs... On 5-4-2021 I went to the infirmary at 9:45 a.m. until 3:30 p.m. and Dr. Nowicki visited w/3 other inmates, went to lunch, came back, and visited w/3 more inmates then cancelled my appt. w/out me receiving any medical attention. On 5-25-2021 I finally met w/a P.A. Merrill and he ordered an X-Ray which I finally received on 5-26-2021. P.A. Merrill never sent the results. I had to G.R.A.M.A. the results (when I was to have the results sent by P.A. Merrill) and did not receive the results until on, or about 6-16/6-17-2021 which stated minimally displaced fracture of the 8<sup>th</sup> rib. I never received ice, A.C.E. wrap, or any instruction of what to do. Merrill & Dr. Nowicki tried to deny, lie, & hide it as proved w/attached grievances. Deliberate Indifference and Reckless endangerment.

On 7-12-2021 I had a severe back spasm, fell, and fractured a rib (again). From that spasm I was unable to urinate. On 7-13-2021 I had to go to the infirmary and get cathetered in order to void my bladder. On 7-14-2021 again I had to go to the infirmary to get cathetered. I was given 2 catheters to take w/me I put in I.C.R's. Later that night when I needed catheters Med-Tech Makin came and very aware of me not being able to void my bladder on my own, refused to give me catheters. I was forced to sit in pain until the next day at a.m. pill-line (7:45 a.m.) in order to get catheters. After this incident I had to reuse the same catheters which in turn caused an infection, swelling, and bleeding in/from my penis. Finally on 7-20-2021 I met w/P.A Crockett whom said he'd give me antibiotics but no order for catheters... "only allowed to give you 2 a day." He (I later found out) lied. It is 4 a day. This made the antibiotics moot because I was forced to reuse catheters again. He also lied and said he would set an appt. w/an outside provider (Urology) and did not. This went on till 8-6-2021 (reusing catheters, infection, and severe pain). P.A. Ceilinski came to my cell on 8-6-2021 admitted he knew about me having

only 2 catheters a day, informed me I am ~~allow~~ able to get 4. I asked why he didn't do anything and get me 4 a day weeks ago, and he said its not serious. The infection & pain could of been eliminated weeks ago!

On the night of 7-27-2021 my back spasmed again and I rolled my ankle, heard a loud audible pop, and slammed to the floor. I knew it was broke (foot). On 7-28-2021 I went to the infirmary got cathetered and showed the nurse my leg. It was swollen from my foot all the way up to my knee on my Right leg.

He said he'd put an E-Mail in to see a provider. On 7-30-2021 C.O. Sat.Eberly called the infirmary & was told to talk to the med-tech "Joe" Cutshall at pill-line. I showed him & he said he'd call the infirmary. At p.m. pill-line on 7-31-2021 about 4:00pm. he gave me an Ace bandage and said I could have ice and that's it. I did not even know how to wrap it. Finally on 8-2-2021 I received an X-Ray which proved my foot was broke. It took 6 days in order to receive medical attention. Even after multiple phone calls, ICR (Inmate Care Requests), pleading at pill-lines, and obvious bruising and ~~swell~~ swelling.

### C. CAUSE OF ACTION

6. Plaintiff alleges that the following constitutional rights, privileges or immunities have been violated and that the following facts form the basis for the allegations:

1. Count I: Plaintiff's Sixth Amendment and Liberty Interests to equal protection are denied by the Defendant based upon the following: \_\_\_\_\_

N/A

2. Count II: Plaintiff's Eighth Amendment and Liberty Interests to be free from cruel and unusual punishment have been violated by Defendants' actions in that  
The named Defendants knowingly, willingly and w/ a culpable state of mind ignored/refused to treat a serious medical need (broken rib, broken foot, and the inability to void bladder) for days and even weeks as proven w/ enclosed grievances.

Other rights being violated (include Amendments as appropriate): \_\_\_\_\_

N/A

**D. INJURY**

Describe how you were injured as a result of the claims herein:

Broken Rib

Broken foot

Unable/inability to void bladder w/out a catheter

**E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF**

13. Plaintiff has not filed any other law suits in state or federal court dealing with the same facts involved in this action. # 2:20-cv-00721-DAK

14. Plaintiff has previously sought informal or formal relief from appropriate administrative officials at Utah State Prison regarding the acts complained of herein without remedy. Final-level administrative grievance/appeal documentation is attached as an Exhibit.

**F. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- a) Trial by jury.
- b) That counsel be appointed to represent the Plaintiff in this action.
- c) Punitive damages in the amount of \$ 3,500,000.
- d) Compensatory damages in the amount of \$ 1,500,000.
- e) Grant attorney fees and court costs for this action.
- f) Such other and further relief the court deems just and proper.

DATED this 26 day of December, 2021

Signature: Barry Viens  
Printed name: Barry Viens  
Plaintiff, Attorney pro se

**DECLARATION UNDER PENALTY OF PERJURY**

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint and that the information contained therein is true and correct, and filed according to 28 U.S.C. Sec. 1976 and 18 U.S.C. Sec. 1621.

EXECUTED at USP Draper on December 26<sup>th</sup>, 2021

Mary Viens  
Signature of Plaintiff  
Printed name: Mary Viens